

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Docket No: Cr

77-1218

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B.P./S

UNITED STATES OF AMERICA

Appellee

V.

DANIEL RICHARD ZOGBI

Appellant

Appeal from the United States District
Court for the District of Vermont

APPENDIX FOR THE UNITED STATES

MARK A. KAPLAN
109 South Winooski Avenue
Burlington, Vermont 05401
Attorney for Appellant-
Defendant.

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>Page</u>
DOCKET ENTRIES	.1-6
GOVERNMENT'S EXHIBIT 2	7
GOVERNMENT'S EXHIBIT 3	8
INDICTMENT	.9-14
TRANSCRIPT PAGES 12-16	.15-19
TRANSCRIPT PAGE 18	20
TRANSCRIPT PAGE 22	21
TRANSCRIPT PAGES 34-35	.22-23
TANSCRIPT PAGE 63	24
TANSCRIPT PAGE 127	25
TRANSCRIPT SESSION II PAGES 38-53	.26-41
JUDGMENT ORDER	.42-43

OFFENSE NO.

OFFENSE NO.

OFFENSE NO.

JUDGE/MAGISTRATE Assigned U.S.

210 2 1007

ZOGBI, DANIEL RICHARD

Case Filed

Mo. Day

11 04

76

79

1

No. of Dets

* 1

Yr.

Docket No.

Det.

U.S. MAG. CASE NO. 76-28M

BAIL • RELEASE

Denied

AMT

Set

Fugitive

Pers. Recog

PSA

\$ 50,000

Date

10-15-76

10% Deposit

Surety Bond

Bail Not Made

Status Changed

See Docket

Collateral

3rd

Priv. Cust.

Other

U.S. TITLE SECTION

OFFENSES CHARGED

ORIGINAL COUNTS

18:2233	Take motor vehicle from Customs	(1)	1	1
18:2232	Removed vehicle held for search	(2)	1	
18:371	Consp. to commit above	(3)	1	1
18:641	Did steal motor vehicle	(2)	1	
18:549	Unlawful removal of motor vehicle	(3)	1	
18:2312and2	Unlawful transport of motor vehicle	(4)	1	
18:371	Consp. to commit above	(5)	1	

SUPERSEDING COUNTS

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began A 10-14-76	High Risk Date 11-4-76	11-15-76	Trial Set For 4-5-77	Voir Dire 4-5-77
Summons Served	Indict. Waived	1st Plea 11-15-76	ING ☐ G ☐ NOL	Disposition of Charges 4-6-77
First Appearance	In Charging District 2/17/77	Final Plea 3-1-77	ING ☐ G ☐ NOL	Convicted ☒ On All Charges
	Superseding Indict/Info ☐		Trial Began 4-5-77	Acquitted ☐ On Lesser Offenses
			Trial Ended 4-6-77	Dismissed ☒ WOP ☐ WP
				On Government's Motion

76-60

MAGISTRATE

DATE	INITIAL/NO	INITIAL APPEARANCE DATE	OUTCOME
9-30-76	EMM/10JG	10-14-76	DISMISSED
9-30-76	EMM/10JG	10-22-76 EMM	HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
			HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT COURT

Did remove from custody of U.S. Customs motor vehicle previously impounded

Hughes O'Neill

ATTORNEYS

Robert C. Bliss, Esq. Mark A. Kaplan, Esq.
120 North Main Street 109 So. Winooski Ave.
St. Albans, Vt. 05478 Burlington, Vt.

1976

DOCUMENT NO.

PROCEEDINGS

EXCLUSABLE DEL.

Oct.	18	Filed Magistrate's Complaint; Warrant of Arrest served 9-30-76; Temporary Commitment; and Order Specifying Conditions of Release.
2 "	20	" Amended Bail Reform Act No. 2; and Appearance Bond - \$50,000, with 10% deposit.
3 Nov.	4	" Indictment.
"	"	" Record of Grand Jurors concurring.
"	9	Arraignment cont. to 11-15-76 at deft. atty's request.
Nov.	15	In open Court before Judge Coffrin, defendant present with his attorney, Robert Bliss, Esq., for arraignment. Jerome O'Neill, Esq. for Government.
"	"	Court makes inquiries of defendant.
"	"	Defendant was arraigned by Clerk and enters a plea of not guilty as to counts 1, 2 & 3. 3 12-15-76 A
"	"	Ordered: that psychiatric examination be allowed to determine the mental capacity of the defendant.
"	"	Ordered: all motions should be filed by November 29, 1976.
"	"	Mr. Bliss moves for a reduction of bail.
"	"	Ordered: bail reduced to \$ 3,000.00(from \$ 5,000.00).

DATE		IV. PROCEEDINGS (continued)		PAGE TWO	V. EXCLUDABLE DELAY			
1976		DOCUMENT NO.			Interval Section 1 (a)	Start Date End Date (b)	LT Code (c)	Total Days (d)
4	Nov. 16	1	Filed Financial Affidavit.					
5	" 16	"	Appointment of Robert G. Bliss, Esq. as counsel.					
6	Nov. 24		Filed Order granting defendant's counsel's oral motion that the Court order a psychiatric examination of the defendant to determine his present state of mental competency. William A. Woodruff, M.D. to examine defendant on December 14, 1976, at 1:30 PM; a report of the results of said examination shall be filed with the Court as soon as possible after the completion thereof. Copy mailed to attys & Dr. Woodruff.					
7	" 30		Filed Deft's Motion for Discovery and Memorandum.					
8	Dec. 10	"	Govt's Response to Motion for Discovery.					
9	" 27	"	Govt's Notice of Readiness.					
1977								
10	Feb. 7		Filed appointment of Mark A. Kaplan, Esq. as counsel for defendant.					
11	Feb. 16		Filed Motion for Continuence					
12	Feb. 16	"	Memorandum of Law in Support of Defendant's Motion for a Continuence					
	Feb. 17		Filed Record of Grand Jurors Concurring.					
13	" "		Filed Superseding Indictment. Mailed copy to Defendant's Attorney.					
14	Feb. 22		Filed Order -- Arraignment on superseding Indictment filed Feb. 17, 1977, shall be scheduled for March 1, 1977, at 2:00 PM; All motions shall be filed by March 7, 1977; Trial is set for April 5, 1977, at 9:30 AM. Copy mailed to attys.					
15	" 25		Filed Petition for Writ of Habeas Corpus Ad Prosequendum.					
	Feb 25		Issued Writ of Habeas Corpus Ad Prosequendum.					
	Mar. 1		In Court before Judge Coffrin. Defendant present in court with his attorney, Mark A. Kaplan, Esq. for arraignment on superseding indictment. Asst. U.S. Attorney Jerome O'Neill for Government.					
	" "		Defendant was arraigned and plead not guilty on counts I, II, III, IV, and V.					
	" "		ORDERED: Bail to remain as previously set.					
16	Mar. 7		Filed Defendant's Motion to Compel Election.					
17	" "		Filed Defendant's Memorandum of Law in Support of Defendant's Motion to Compel Election.					
18	" "		Filed Defendant's Motion for a Bill of Particulars.					

3 11 30 76 F

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER
11-4-76	#26373	\$5,000			

DATE		PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(Document No.)	(a)	(b)	(c)	(d)
<u>1977</u>						
19.	Mar. 7	Filed Defendant's Memorandum of Law in Support of Defendant's Motion for a Bill of Particulars.				
20.	Mar. 9	Filed Government's Response to Motion of Defendant Daniel Bichara Zogbi for Bill of Particulars.				
21.	" "	Filed Government's Bill of Particulars.				
22.	" "	Filed Government's Opposition to Motion of Defendant Daniel Bichara Zogbi to Compel Election -and- Memorandum of Points and Authorities.				
	Mar. 14	In open Court before Judge Coffrin, defendant present with his attorney, Mark A. Kaplan, Esq.; Jerome O'Neill, Esq. for Government.				
	" "	Hearing on defendant's motion for Bill of Particulars.				
	" "	Court suggests that counsel get together with respect to paragraphs 15 & 16 of said motion.				
	" "	Hearing on defendant's motion to compel election.				
	" "	Taken under advisement. (Case still stands for trial on April 5, 1977, at 9:30 AM)				
23.	" 15	Filed Motion for Issuance of Subpoena.				
24.	Mar. 16	Filed Order - That a witness be subpoenaed to appear before the U.S. District Court on behalf of deft. Zogbi, and that costs incurred be paid in same manner as fees paid in cases of witnesses subpoenaed in behalf of the Government. Copy mailed to attorney Kaplan.				
25.	Mar. 22	Filed Interim Opinion and Order -- defendant's motion to compel election is hereby denied without prejudice to renew such motion at a later time. Copy mailed to attorneys.				
26.	Apr. 4	Filed Defendant's Subpoena to Testify - Returned Served.				
	Apr. 5	In Chambers, Jerome O'Neill, Esq. for Government; Mark A. Kaplan, Esq. for defendant.				
	" "	Mr. O'Neill moves to dismiss Count 2 of Indictment, no objection thereto, it is				
	" "	Ordered: Motion granted. Count 2 dismissed.				
	" "	In Court, trial by jury begun.				
	" "	A jury was impaneled by the Clerk.				
	" "	Ordered: that an alternate be impaneled.				
	" "	The oath to Petit Jury in criminal cases was administered to the jury.				
	" "	Opening statements were made to the jury by Mr. O'Neill.				
	" "	Mr. Kaplan waives his opening statements at this time.				
27.	" 5	Filed defendant's motion to dismiss Count 1 after the Government's opening statements.				
28.	" "	" Memorandum of Law.				

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

DATE		PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
1977			(a)	(b)	(c)	(d)
	Apr. 5	(Document No.) At the bench, attorneys present, hearing on defendant's motion to dismiss count 1.				
	" "	Decision reserved.				
	" "	The following witnesses, sworn by Clerk, were examined for Government: Frank J. Kopeski, Robert K. Cyr, Bruno Trahan, Raymond W. Rogers, James Harrigan, Joseph Guzzo, John P. Morrissey, Robert Lafortune, John P. Lafleur, Alan R. Lockwood, Emile E. Pion, Donald B. Mitchell, Richard F. Mercier.				
9.	" 5	Filed Government's requests to charge & memorandum.				
	" "	At 3:45 PM, Government rests. (jury excused)				
	" "	In Chambers, attorneys present, Mr. Kaplan moves for a judgment of acquittal as to all counts.				
	" "	Ordered: Count 5 is dismissed; decision reserved as to the remaining counts.				
	" 6	In Chambers, attorneys present, upon consideration of defendant's motion for judgment of acquittal, it is				
	" "	Ordered: Count 1 is dismissed.				
	" "	In Court, trial resumed.				
	" "	Opening statements were made to the jury by Mr. Kaplan.				
	" "	Issa B. Zogbi, sworn by Clerk, was examined by Mr. Kaplan.				
	" "	At 10:15 AM, defendant rests; Government rests; evidence closed.				
	" "	Opening arguments were made to the jury by Mr. O'Neill and by Mr. Kaplan.				
	" "	Closing arguments were made to the jury by Mr. O'Neill.				
	" "	Ordered: that Harold Smith be appointed as Foreman of the jury.				
	" "	At 11:15 AM, Court commences the charge to the jury concluding at 11:35 AM.				
	" "	Ordered: that the alternate be excused at this time.				
	" "	At 11:38 AM, the jury retires to deliberate the case.				
	" "	At 2:30 PM, the jury come into Court and report a verdict of guilty as to counts 3 & 4.				
	" "	Ordered: bail continued as previously set; sentence is set for April 11, 1977, at 3:00PM.				
	Apr. 11	In open Court before Judge Coffrin, defendant present with his attorney, Mark A. Kaplan, Esq., for sentencing. Jerome O'Neill, Esq. for Government.				
0.	" 11	Filed Judgment and Probation/Commitment Order -- defendant is committed to the custody of the				
		(cont'd)				

PROCEEDINGS (continued)

V. EXCLUDABLE DELAY

DATE 1977		(Document No.)		(a)	(b)	(c)	(d)
Apr. 11			Attorney General or his authorized representative for a period of one year as to counts 3 & 4. Execution of sentence is suspended with exception of 60 days which is to be served in a jail type institution and defendant is placed on probation for a period of three years to commence upon release from confinement. Sentences to run concurrently with each other and with sentence imposed in Criminal No. 76-60-1. CONDITIONS: 1. Defendant is not to enter the United States unless by permission of the Immigration officials. 2. Defendant is not to possess, buy, sell or otherwise deal in firearms procured directly or indirectly from any firearms dealer or source in the United States. 3. Defendant shall obey all local, state and federal laws and comply with the rules and regulations of the Probation Department.				
"	"		Court advises defendant of his right to appeal.				
"	"		Ordered: bail continued as previously fixed if case is appealed.				
1.	"	11	Filed Notice of Appeal. Copy mailed to U. S. Atty.; Court Reporter; Mark Kaplan, Esq.; Judge Coffrin; and Clerk, U.S. Court of Appeals for the Second Circuit.				
32.	"	14	Filed Financial Affidavit.				
33.	"	"	" Appointment of Mark A. Kaplan, Esq. as counsel(in appeals court).				
34.	Apr. 19		Filed CJA 21 re transcript.				
"	"	26	Mailed record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N.Y. Attys. notified.				
35	May 3		Filed Scheduling Order - transcript to be filed with Clerk of Court on or before 5-13-77; record to be docketed on or before 5-16-77. Mailed copy to attys.				
36.	May 12		Filed Scheduling Order - transcript to be filed with Clerk of Court on or before 6-13-77; record to be docketed on or before 6-14-77. Mailed copy to attorneys.				
37	"	19	" Scheduling Order - transcript to be filed on or before 6-13-77; record to be filed on or before 6-14-77.				
38.	June 9		Filed Scheduling Order -- transcript to be filed with Clerk of Court on or before June 28, 1977. Copy mailed to attorneys.				

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	(Document No.)				
<u>1977:</u>					
39 June 13	Filed Amendment to Scheduling Order of May 6th-that A copy of the transcript be filed with the Clerk on or before June 28, 1977; that the brief and appendix of appellant be filed on or before July 28, 1977; that if appellant's brief or appendix is not filed by the time directed, appeal shall be dismissed; that the U.S. file it's brief on or before August 29, 1977; that Mark Kaplan, counsel for the appellant shall submit a completed voucher (CJA-20) on or before Sept. 7, 1977; that the argument of the appeal be heard during the week of Sept. 12, 1977. Copies mailed to attorneys.				
40. June 27	Filed Transcript of court proceedings -- Session II, April 6, 1977, and page 145 of April 5th transcript.				
41 " 28	Filed Transcript of court proceedings, Session I, April 5 and 6, 1977.				
" "	Mailed first supplemental record on appeal to Clerk, U.S. Court of Appeals for the Second Circuit, NY, NY. Attorney notified.				

Highgate Springs, Vermont
RFD #2, Swanton, Vermont 05488

Tel. (802) 868-3341

ENF-04-02:P:HS
76-0210-00254

August 31, 1976

Mr. Danile B. Zogbi
12255 St. Evariste
Montreal, Quebec, Canada

Sir:

July 29, 1976
1976 Pontiac, VIN #248726N583018, Reg. FZ12087 Quebec

2105C 881 crossed out



Robert L. O'Connor
R. L. O'Connor

CF 4609
C.R. sec. 171



DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

**REFER TO**

Dear

On there was seized from you at this port

which was being used to transport a quantity of contraband material in violation of 21 U.S.C. 881 and 19 U.S.C. 1595a. By this violation, the vehicle becomes subject to forfeiture.

This is to advise you of your right under section 618 of the Tariff Act of 1930 (19 U.S.C. 1618) to petition for remission or mitigation of the forfeiture. Your petition must be prepared in triplicate, addressed to the Commissioner of Customs and signed by you or your attorney. It must be delivered or mailed to this office within 60 days of the date of this letter for transmittal to the official who will act upon it.

The petition, which may be in the form of a letter or prepared on the enclosed form of application, shall include a description of the merchandise involved, shall show your interest in the merchandise, shall show the date and place of the violation and seizure and shall state facts which you feel justify remission or mitigation.

Since consideration leading to possible remission or mitigation of penalties can only be given on the basis of your written petition, it is extremely important that you give this matter your prompt and careful attention. However, if it is your intention not to petition for the remission or mitigation of the forfeiture, please advise me in writing as soon as possible.

If you require additional information with regard to preparation of your petition, we will be pleased to provide you with such information.

Sincerely yours,

Port Director

Enclosure

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

CLERK
DEPUTY CLERK

FEB 17 9 35 AM '77

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES OF AMERICA

Criminal No. 76-9

v.

18 U.S.C. §§ 371, 641, 2233

DANIEL RICHARD ZOGBI

COUNT I

The Grand Jury charges:

On or about the 23rd day of September, 1976, in the District of Vermont, DANIEL RICHARD ZOGBI, the defendant, unlawfully, willfully and forcibly did rescue and dispossess, and attempt to rescue and dispossess, a 1976 Pontiac Trans Am, Quebec vehicle registration FZ12087, vehicle identification number 2W87Z6N583018, from officers of the United States Customs Service after the vehicle had been taken, detained and seized by officers of the United States Customs Service, persons authorized to make searches and seizures; in violation of §§ 2233, 2, Title 18, United States Code.

COUNT II

The Grand Jury Further Charges:

On or about the 23rd day of September, 1976, in the District of Vermont, DANIEL RICHARD ZOGBI, the defendant, unlawfully, willfully and knowingly did steal and purloin a 1976 Pontiac Trans Am, Quebec vehicle registration FZ1208, vehicle identification number 2W3756N583018, of the value of in excess of \$100.00 of the goods and property of the United States; in violation of Title 18, United States Code, § 641.

4/1/77

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COUNT III

The Grand Jury Further Charges:

On or about the 23rd day of September, 1976, in the District of Vermont, DANIEL BICHARA ZOGBI, the defendant, unlawfully, willfully and knowingly did remove merchandise, to wit, a 1976 Pontiac Trans Am, Quebec vehicle registration FZ12087, vehicle identification number 2W87Z6N583018, in the custody and control of the United States Customs Service, in violation of Title 18, United States Code, § 549.

COUNT IV

The Grand Jury Further Charges:

On or about September 23, 1976, DANIEL BICHARA ZOGBI, the defendant, unlawfully, willfully and knowingly did transport in foreign commerce from Highgate Springs, in the District of Vermont, to the Province of Quebec, Canada a motor vehicle, to wit, a 1976 Pontiac Trans Am, VIN 2W87Z6N583018, knowing the same to have been stolen; in violation of 18 United States Code, §§ 2312 and 2.

The Grand Jury Further Charges:

From on or about the 29th day of July, 1976 up to and including the 26th day of September, 1976, in the District of Vermont and elsewhere, DANIEL BICHAP LOGBI, the defendant, and Byron Kennedy, named herein as a co-conspirator, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together with each other and with other persons to the grand jury unknown to commit offenses against the United States, to wit, to violate Title 18, United States Code, §§ 2233, 641 and 549.

It was part of the conspiracy that the defendant and co-conspirators would unlawfully, willfully and knowingly forcibly rescue and dispossess and attempt to rescue and dispossess property, articles and objects after the same had been taken, detained and seized by officers of the United States authorized to make searches and seizures;

It was further a part of the conspiracy that the defendant and co-conspirators would unlawfully, willfully and knowingly steal and purloin goods and property of the United States valued at an excess of \$100.00;

It was a further part of the conspiracy that the defendant and co-conspirators would unlawfully, willfully and knowingly remove merchandise in the custody and control of the United States Customs Service.

It was a further part of the conspiracy that the defendant and co-conspirators would unlawfully, willfully and knowingly transport stolen motor vehicles in foreign commerce.

OVERT ACTS

In furtherance of the conspiracy and to affect the objects thereof, the following overt acts were committed in the District of Vermont and elsewhere;

1. On September 22, 1976, DANIEL BICHARA ZOGBI and Byron Kennedy entered the United States at the United States Border Inspection facility at Champlain, New York.
2. On September 23, 1976, DANIEL BICHARA ZOGBI and Byron Kennedy entered the United States at the United States Border Inspection facility at Champlain, New York.
3. On or about September 23, 1976 DANIEL BICHARA ZOGBI and Byron Kennedy removed a 1976 Pontiac Trans Am from the vicinity of the Border Inspection Station at Highgate Springs, Vermont.

(In violation of 18 U.S.C. § 371)

A TRUE BILL

Maxwell Eaton Sr.
Foreman

GEORGE W. F. COOK
United States Attorney

By: Jerome F. O'Neill
JEROME F. O'NEILL
Assistant United States Attorney

February 17, 1977

Burlington, Vermont

A. Yes, that is correct.

Q What time did you actually start work?

A. I started work at 8:30 p.m. of July 28th of 1976.

Q How long was your shift to run?

A. For twelve hours, to 8:30 a.m., July 29th.

Q Now on that particular date, were you assigned to be right down outside the Customs facility, or were you assigned within the physical Customs facility?

A. I was in the inside area of the border station of Highgate Springs. That was my post of duty for that evening.

Q In the course of that evening, did you have occasion to come in contact with an individual by the name of Daniel Zogbi?

A. Yes, I did.

Q Do you see Mr. Zogbi here in court today?

A. Yes. He is the gentleman to the right of the defense counsel, wearing a tan suit.

MR. O'NEILL. May the record reflect the identity of Mr. Zogbi, your Honor?

THE COURT. It may.

Q (By Mr. O'Neill) Approximately what time did you first come in contact with Mr. Zogbi?

A. Approximately fifteen minutes past midnight on July 29, 1976.

Q To the best of your knowledge, were you the first person that came in contact with Mr. Zogbi?

A. No, I was not.

Q Would it be accurate to say after other contact, he was referred to you or you were referred to him?

A. Yes.

Q Was there a point in time that evening when you interviewed Mr. Zogbi?

A. Yes, there was.

Q In addition to interviewing Mr. Zogbi, were you provided information by other Customs officers?

A. Yes, I was.

Q Now following that, did you have occasion to take any action with respect to an automobile?

A. Yes. I seized the automobile that was driven by Mr. Zogbi.

Q Now would you describe the automobile?

A. It was a 1976 Pontiac Trans Am Firebird. The license plate number was a Quebec plate, and it was Zulu-2103, and the Vin number was 2Wiskey87Zulu6November583018, color orange, I believe.

Q Now at the time you seized the automobile, where was it physically located?

A. It was in Lane Number One at the border station at Highgate Springs.

Q What did Mr. Zogbi say with respect to the ownership of the motor vehicle?

A. He stated he was leasing it from a company in Montreal.

Q What did Mr. Zogbi say where he was going in the United States with the automobile?

A. He was attempting to leave the United States at the border crossing there and was turned back by Canadian Customs.

Q He had re-entered from Canada on that occasion?

A. That is correct.

Q And following the seizure of the vehicle, where was it placed?

A. It was placed in the area known as the impound lot at the Highgate Springs border crossing station, to the south of the station.

Q How would you describe the impound lot?

A. It is a grassed area; it is not fenced in. It is out of the main stream of traffic in a secondary search area, and probably the southern-most point of Government land of the station.

Q What was the authority under which you seized it?

A. 18 United States Code, 1581A.

Q Did you have occasion at some point in time to have particular contact with the automobile itself?

THE COURT. May we back up to the previous question. Would you repeat it.

Q (By Mr. O'Neill) What was the authority under which you seized the vehicle?

A. The authority was 18 United States Code, 1581A.

Q What is Section 1581?

A. 1581 Authorizes me to make seizures.

Q And, did you at some point in time on that occasion have particular contact with the vehicle itself?

A. That is correct.

Q What was your contact in that respect?

A. I went through the vehicle to search for any contraband we might have missed and made inventory of what was in the vehicle, the parts of the vehicle.

Q Did you say anything to Mr. Zogbi with respect to seizure of the vehicle?

A. I informed him it was under seizure as was the merchandise in the vehicle.

Q Who did you turn the automobile over to?

A. To supervisory personnel at Highgate Springs.

Q Did you make any type of record of the vehicle identification number of that particular vehicle as the one you read off?

A. I made a Customs Form 151 which is a record of search and seizure and arrest.

Q Was it listed on that form?

A. Yes, it was.

Q I take it, when Mr. Zogbi left the port on that occasion he did not take the vehicle with him then?

A. No, he did not.

MR. O'NEILL. Thank you. That is all we have of this witness at this time.

CROSS EXAMINATION

Q (By Mr. Kaplan) Mr. Kopeski, you stated on July 29th you seized the automobile that had been in the possession of Mr. Zogbi, is that correct?

A. That is correct.

Q Would you tell me please, basically the procedure that you followed in so seizing the automobile?

A. In seizing the automobile, we informed the individual that the merchandise or vehicle, whatever, is under seizure and it was. Customs Form 151 is required to be filled out.

Q Can you recall any other comments that you made to Mr. Zogbi at that time?

A. No, I cannot.

Q Did you explain to him in any detail what was meant by the fact you had seized the automobile?

A. I am not sure whether I did or did not.

Q Can you tell me where you were physically located with respect to Lane One when you had the conversation with Mr.

A. It was a standard form Customs receipt that indicated on it the person's name and the article seized. It is a receipt for seized goods.

Q Do you know who signed that receipt?

A. No, I don't.

Q Are you the person that gave that receipt to Mr. Zogbi?

A. I cannot recall for sure.

Q Do you recall seeing anyone give him that receipt?

A. No, I cannot recall.

Q Then you don't know whether or not, in fact, Mr. Zogbi, from your own personal knowledge, whether or not, in fact, he was given any receipt indicating that his vehicle had been seized?

A. No, I cannot say that.

Q Are you the person, Mr. Kopeski, who actually parked the car in the impound area?

A. No, I don't believe I was.

Q Do you know who did that?

A. No, I can't recall.

Q Do you recall what happened to the car keys after the car was parked in the impound area? Do you have any knowledge of that fact?

A. They would have been given to supervisory-inspectional personnel, but I cannot recall who.

Q Did you see that happening? Did you see the keys being

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States Attorney showed you and the one you showed to me earlier, was that given to the defendant in the case?

A. No, it is not.

Q Now as I understand it, you have been involved in several seizure situations before. Is it possible in that type of situation for the items seized at some point to go back to the person from whom it was seized?

A. Yes, after making proper petition to what we call Financial Penalties & Forfeitures Division of Customs, and upon mitigation of the penalty, it can be returned.

Q Do you know whether that was done in this case or not, from your own personal knowledge?

A. I don't know whether it was done or not.

Q Did you place any sticker indicating that the car had been seized on the automobile?

A. No, I did not.

Q Do you know from your own personal knowledge if anyone did?

A. I do not know.

Q Is it normal in a situation where a car was seized, or some other item, to have some identification placed on the automobile so indicating?

A. Not on every occasion.

Q Have you done it in the past?

A. I have done it in the past.

Q Was the letter sent to the leasing company?

A. I don't know, at that time, if it was.

MR. KAPLAN. Your Honor, I object to this being introduced into evidence. I don't feel any groundwork has been laid to show this letter was actually sent to the defendant in the case.

THE COURT. We'll note your objection but admit Government's "2" and "3".

(Government's Exhibits "2" and "3" were received in evidence.)

Q (By Mr. O'Neill) Mr. Cyr, did you have anything to do with personally generating the letter that was sent out?

A. No, sir.

Q In other words, this was an item presently contained in the file reflecting it is normally handled in a routine manner?

A. Yes, sir.

Q Now showing you here, and going back to Government's Exhibits "2" and "3", what is Government's Exhibit "2" in relation to Government's Exhibit "3"?

A. It is a carbon copy showing the date and the file number, the addressee.

Q Now you say a carbon copy. This looks like it has very little information on it, Would there normally be other information on the letter received by the individual?

A. Exh' t "3" would be the letter received by the individual.

Q In other words, do I correctly describe it if I say what happens is that a copy of this form is used; a piece of carbon is put in? In other words, a piece of paper underneath that when it is typed out, and this is the piece that comes out from the bottom? (indicating)

A. Yes, sir.

Q Are there two possible sections under which seizures could be made as reflected in the form?

A. Yes.

Q What is normally done with respect to those? Are they both normally sent off, or how is that normally handled?

A. Would you repeat that?

Q When this letter is generated to the individual, are both sections left on there, or is one crossed off, or both crossed off?

A. Normally, this is a form letter for contraband in a narcotics sense.

Q Are both citations left on there if used for other purposes?

A. No, sir.

Q The name at the bottom, who is that individual?

A. Mr. O'Connor, the Port Director at Highgate.

Q Now at my request, did you, yesterday, take a look through your file maintained at Highgate Springs?

Q (By Mr. O'Neill) Could we have your name, sir?

A. Joseph Guzzo.

Q How are you employed, Mr. Guzzo?

A. I am a Customs Inspector.

Q Where are you so employed?

A. At Champlain, New York.

Q How long have you been employed in that position?

A. Nearly eight years.

Q Directing your attention to September 23, 1976, were you working on that day?

A. Yes, I was.

Q What shift were you working?

A. Midnight to 8:00.

Q Did you have occasion on that date to be involved in a secondary inspection of an individual by the name of Daniel Zogbi?

A. Yes, I was.

Q Who was with him on that occasion?

A. Another person. I don't recall his name.

Q You indicated this was a secondary examination, is that right?

A. That is correct.

Q What is the difference between a secondary examination and any other type of examination?

A. When an automobile originally arrives from Canada,

A. He objected to the time I said, "baby".

Q What did you say to his father?

A. I tried to explain to him it was just a statement that I made. His son was very upset. He was acting almost like a baby, and I guess that is what I said.

Q After you had handed him the warrant, did Mr. Zogbi or his father say anything beyond the conversation which you indicated you had with Mr. Zogbi's father?

A. Yes. After Mr. Zogbi calmed down regarding what he was speaking of regarding "baby," he asked his son, Danny, what the paper was that I had handed to him.

Q Did you hear Mr. Daniel Zogbi say anything?

A. Yes, I did.

Q What did he say?

A. He said to his father, "Calm down. Some officer must have seen me taking the car".

Q Did Mr. Daniel Zogbi do anything with the warrant?

A. Yes, he did. He crumpled it up into a paper ball and threw it at me, at my feet.

MR. O'NEILL. I guess that is all we have of this witness, your Honor, at this time.

THE COURT. Mr. Kaplan.

CROSS EXAMINATION

Q (By Mr. Kaplan) Mr. Mercier, you said it was after the defendant's father calmed down that the defendant said to

1 THE COURT: All right. Willfully and
2 knowingly and aiding and abetting, the
3 defendant filed no request to charge. Are
4 you gentlemen ready to proceed to your
5 argument at this point?

6 [At this point counsel presented their
7 arguments to the jury.]

8 THE COURT: We will proceed to charge
9 the jury.

10 Ladies and gentlemen, I am going to appoint
11 Mr. Smith as your foreman. This case is a criminal pro-
12 ceeding brought by the United States against Daniel
13 Bichara Zogbi. The grand jury indictment originally
14 charged the defendant in five counts. Counts 1, 2 and 5
15 have been dismissed and are no longer for your considera-
16 tion, and you need not consider the offenses charged in
17 those counts in your deliberations. As to the remaining
18 two counts, the indictment in substance charges the
19 defendant as follows:

20 Count 3 of the indictment charges that
21 on or about September 23, 1976, in the District of
22 Vermont, the defendant unlawfully, willfully and knowingly
23 did remove merchandise, that is a 1976 Pontiac Trans Am,
24 Quebec vehicle registration FZ12087, in the custody and
25 control of the United States Customs Service; in violation

1 of Title 18, United States Code, 549.

2 Count 4 charges that on or about September
3 23, 1976, the defendant unlawfully, willfully and know-
4 ingly did transport in foreign commerce from Highgate
5 Springs, in the District of Vermont, to the Province of
6 Quebec, Canada, a motor vehicle, that is the same 1976
7 Pontiac Trans Am as mentioned above, knowing the same to
8 have been stolen; in violation of 18 United States Code,
9 2312 and 2.

10 Your verdict should not be influenced by
11 the fact that the defendant was indicted for these
12 offenses by the Grand Jury. An indictment is merely a
13 formal procedural method of accusing a defendant of a
14 crime preliminary to trial. Therefore, the indictment is
15 not evidence of any kind against the defendant and does
16 not create any presumption or permit any inference of
17 the defendant's guilt.

18 The defendant has pleaded not guilty to
19 the charges contained in the indictment. You have been
20 chosen and sworn as jurors in this case to determine
21 the issues of fact presented by the allegations of the
22 indictment and the denial made by the "not guilty" pleas
23 of the defendant. You are to perform this duty without
24 bias or prejudice as to any party.

25 You have observed that the defendant
did not take the stand to testify in his own behalf. He

1 has a constitutional right not to do so. One of the
2 highest constitutional safeguards in our system of
3 criminal justice is that a defendant is not obliged to
4 testify or produce evidence in his own behalf. He may
5 not be called as a witness by the prosecution or com-
6 pelled to give evidence against himself. The exercise
7 by a defendant of his right not to testify raises no
8 presumption of guilt and permits no unfavorable inference
9 of any kind to be drawn. In determining a defendant's
10 guilt or innocence of a crime charged, you are not to
11 consider, in any manner whatsoever, the failure of the
12 defendant to testify as a witness or to produce evidence
13 in his own behalf.

14 The law presumes a defendant to be
15 innocent of a crime with which he is charged. This pre-
16 sumption of innocence continues throughout the trial down
17 to the time in the jury room, if that time does, in fact,
18 arrive, when you are satisfied from all the evidence,
19 beyond a reasonable doubt, that a defendant is guilty of
20 the crime charged. The law permits nothing but legal
21 evidence presented before this jury to be considered in
22 support of the charges against the defendant. So the
23 presumption of innocence alone is sufficient to acquit a
24 defendant, unless you are satisfied beyond a reasonable
25 doubt of the guilt of the defendant from all the evidence

1 in the case.

2 You have seen and heard the evidence pro-
3 duced in this trial and it is the sole province of the
4 jury to determine the facts of this case, but first I
5 would like to call to your attention certain guides by
6 which you are to evaluate the evidence.

7 The burden of proof is on the Government
8 to prove each element of the charges against a defendant
9 beyond a reasonable doubt. You cannot find a defendant
10 guilty unless you determine that the Government has estab-
11 lished by the evidence each and every essential element
12 of the crimes charged against him beyond a reasonable
13 doubt. However, to support a verdict of guilty, you
14 need not find every fact beyond a reasonable doubt. You
15 need only find that the crime charged has been proven
16 beyond a reasonable doubt from all of the evidence in
17 the case.

18 A reasonable doubt is a fair doubt based
19 upon reason and common sense and arising from the state
20 of the evidence. By proof beyond a reasonable doubt, you
21 are not to understand that all doubt is excluded. It is
22 rarely possible to prove anything to an absolute
23 certainty. A reasonable doubt means substantial doubt
24 such as would make an honest and sensible and fair-minded
25 person hesitate to act in a serious and important matter

1. wherein ascertainment of the truth is conscientiously
2 being sought.

3 A reasonable doubt may arise not only from
4 the evidence produced, but also from a lack of evidence.
5 I stress to you again that the law never imposes upon a
6 defendant in a criminal case the burden or duty of pro-
7 ducing any evidence and, since the burden is always upon
8 the Government to prove the accused guilty by proving
9 beyond a reasonable doubt every essential element of
10 the crime charged, a defendant has the right to rely upon
11 a failure of the prosecution to establish such proof. A
12 defendant may also rely upon evidence brought out on
13 cross examination of witnesses for the Government.

14 If, after impartial consideration of all
15 the evidence you can candidly say that you are not
16 satisfied of the guilt of the defendant beyond a reason-
17 able doubt, you should find the defendant not guilty.
18 Conversely, if you are satisfied of his guilt beyond a
19 reasonable doubt, you should find the defendant guilty.

20 There are two types of evidence which a
21 jury may consider in determining whether or not a defendant
22 is guilty as charged. One is direct evidence, such as the
23 testimony of an eye witness. The other is circumstantial
24 evidence, which consists of proof of a chain of circum-
25 stances from which a conclusion regarding essential facts

1 in the case may logically be drawn. Regardless of the
2 nature of the evidence, the law requires that before con-
3 victing a defendant, the jury must be satisfied of the
4 defendant's guilt beyond a reasonable doubt from all of
5 the evidence in the case. On the other hand, if all the
6 evidence in the case satisfies you beyond a reasonable
7 doubt of the defendant's guilt, you should find him
8 guilty.

9 Circumstantial evidence is legal and
10 proper for you to consider, and you may convict the
11 defendant upon this class of evidence alone if you are
12 persuaded thereby beyond a reasonable doubt of his guilt.
13 To do so, however, the circumstances must be such as
14 will lead the guarded discretion of a just and reasonable
15 man to the conclusion that the crime charged has been
16 committed and that the defendant is guilty of its
17 commission.

18 Any testimony which has been excluded or
19 which has been stricken from the record is not evidence in
20 the case, and you will entirely disregard it in arriving
21 at your verdict. Likewise, the arguments of the
22 attorneys and any statements which they made in their
23 arguments are not evidence and will not be considered as
24 evidence by you. You will render your verdict only from
25 the evidence in the case which consists of the sworn

1 testimony of the witnesses and all exhibits which have
2 been received in evidence. It is your recollection of
3 the witnesses' testimony and not the attorneys' statements
4 as to what that testimony was which will control you in
5 reaching your decision. But in your consideration of the
6 evidence, you are not limited to the bald statements of
7 the witnesses. On the contrary, you are permitted to
8 draw, from facts which you find have been proved, such
9 reasonable inferences as are justified in the light of
10 your own experience.

11 If you feel that witnesses differed as to
12 what the facts were, it is generally better to reconcile
13 the conflicted testimony, if you reasonably can, upon the
14 theory that all of the witnesses intended to tell the
15 truth. But if you cannot so reconcile the testimony,
16 then you must determine, from all the evidence before
17 you, which of the witnesses is entitled to greater credit.

18 The credibility of the witnesses and the
19 weight to be given their testimony are questions entirely
20 for your determination. The law is that you are not bound
21 to give the same weight, the same credit, or have the
22 same faith in the testimony of each witness, but you
23 should give the testimony of each witness just such
24 weight, just such credit, and have just such faith in it
25 as you think it is fairly entitled to receive. Consider

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the appearance of the witnesses on the stand; their candor or lack of candor; their feeling or bias, if any; their interest in the result of the trial and the reasonableness of the testimony they gave. You should believe as much or as little of the testimony of each witness as you think is proper.

7

A witness is presumed to speak the truth, but if you reach the conclusion that a witness in the case has willfully or deliberately given false testimony about any material fact, you may reject from consideration all of his or her testimony, or you may accept such part as you may deem true and disregard that which you may feel is false.

14

Having in mind the general guidelines that I have just given you, it now becomes the duty of the Court to instruct you as to the law applicable to your determinations in this case.

18

It is your duty as jurors to follow the law as stated in these instructions and to apply the rules of law so given to the facts as you find them from the evidence. You will not be justified under your oath as jurymen in finding a verdict contrary to the law as the Court gives it to you.

24

25

It is the sole province of the jury to determine the facts in the case. The Court does not, by

1 any instructions given to you, intend to persuade you
2 as to how you should decide any question of fact. It
3 is your duty to decide all the facts from the evidence.
4 All parties have a right to expect that you will care-
5 fully and impartially consider all the evidence in the
6 case, follow the law as stated by the Court, and reach a
7 just verdict.

8 Count 3 of the indictment alleges that on
9 or about September 23, 1976, the defendant willfully and
10 knowingly did remove merchandise, that is the 1976
11 Pontiac Trans Am, in the custody and control of the
12 United States Customs Service in violation of 18 U.S.C.
13 549. Section 549 of Title 18 provides in relevant part,
14 "whoever ... unlawfully removes any merchandise ... in
15 Customs custody or control" shall be guilty of an offense
16 against the United States.

17 Before it is possible to find a
18 defendant guilty of the offense charged in Count 3, you
19 must be satisfied that each of two elements of the offense
20 has been proved by the Government beyond a reasonable
21 doubt. These two elements are as follows:

22 First, that on or about September 23,
23 1976, the defendant removed merchandise from the custody or
24 control of the United States Customs. The word "merchan-
25 dise" is defined as "the objects of commerce, wares or

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1 goods." The "custody or control" of Customs may be actual
2 or constructive. Actual custody or control means that a
3 person has physical control or custody of the object,
4 that is the object is in his possession. Constructive
5 custody or control means that a person has the power to
6 exercise dominion or control over the object although the
7 object may not be in the physical possession of the
8 Customs Service. This element is fulfilled if the Trans
9 Am was removed from either the actual or constructive
10 custody or control of United States Customs.

11 The second element that the Government
12 must prove beyond a reasonable doubt is that the defendant
13 has acted knowingly and willfully.

14 An act is done knowingly if it is done
15 voluntarily and intentionally and not because of mistake
16 or accident or some other innocent reason. An act is done
17 willfully if it is done knowingly and voluntarily and
18 with the specific intent to do something which the law
19 forbids. That is, with the purpose to either disobey or
20 disregard the law.

21 This element is satisfied only if the
22 defendant acted willfully in removing the Trans Am from
23 Customs custody and if the defendant knew that the Trans
24 Am was in the custody and control of United States
25 Customs.

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Count 4 of the indictment alleges that the defendant willfully and knowingly transported in foreign commerce from Highgate Springs, Vermont, to the Province of Quebec, Canada, a 1976 Pontiac Trans Am knowing it to have been stolen, in violation of Title 18, United States Code, 2312, or that the defendant aided and abetted the commission of that offense in violation of Title 18, United States Code 2.

Section 2312 of Title 18 of the United States Code provides that "whoever transports in interstate or foreign commerce a motor vehicle ... knowing the same to have been stolen ..." has committed an offense against the United States.

There are two elements of this offense, each of which the Government must establish beyond a reasonable doubt. These elements are:

First, that on or about September 23, 1976, the defendant knowingly and willfully transported the Pontiac Trans Am in foreign commerce. In this regard, whoever drives an automobile under its own power across a national border from one country to another transports a motor vehicle in "foreign commerce."

I have previously defined "knowingly" and "willfully" for you. In the transportation of the motor vehicle, the Government must prove that the

1 defendant acted knowingly and willfully.

2 The second element that the Government
3 must prove beyond a reasonable doubt is that the defendant
4 knew that the motor vehicle was stolen at the time that
5 it was transported in foreign commerce. In this regard,
6 you may consider the circumstances surrounding the
7 transportation of the automobile, if any, the secret or
8 clandestine nature of the transaction, and any other
9 evidence which may bear upon the defendant's knowledge.
10 It is not necessary that the Government prove to a cer-
11 tainty that the defendant actually knew the automobile was
12 stolen. An inference of the existence of knowledge may be
13 drawn from evidence that the defendant was aware of a high
14 probability that the automobile was stolen, unless you
15 find that the defendant actually believed the automobile
16 was not stolen.

17 The word "stolen" as used in the statute,
18 means acquired or possessed as a result of some wrongful
19 or dishonest act or taking, whereby a person willfully
20 obtains or retains possession of property which is
21 rightfully in the possession of another, without or
22 beyond any permission given, and with the intent to de-
23 prive the party in lawful possession of the motor vehicle
24 of the right to such possession.

25 The Government may establish that the car

1 was stolen under the circumstances of this case, by
2 proving beyond a reasonable doubt that the automobile was
3 taken from United States Customs at a time when it was in
4 the lawful possession of United States Customs, that it
5 was taken without the knowledge or consent of United
6 States Customs, and that it was taken by a person who,
7 at the time of the taking, had the intent to deprive the
8 United States Customs of ownership or of the lawful right
9 of possession of the car.

10 Count 4 of the indictment also charges
11 the defendant with violating 18 United States Code,
12 Section 2, which is generally referred to as the aiding
13 and abetting statute.

14 An aider or abettor within the meaning of this
15 Act is one who assists the perpetrator of a crime. If
16 you find that the defendant did not actually commit the
17 substantive violation alleged in Count 4, but that he
18 aided and abetted, as I will explain that concept to you,
19 the commission of such violation, then you may find the
20 defendant guilty as to Count 4.

21 There are two essential elements to the
22 offense of aiding and abetting: some overt conduct and the
23 intent to violate the law.

24 With reference to the first element, to
25 aid or abet the perpetrator of a crime requires that the

1 defendant associate himself with the illegal venture,
2 that he participate in it as something that he wishes to
3 bring about, and that he seeks by his action to make it
4 succeed. The defendant's mere association with those who
5 committed the crime or knowledge that the crime was to be
6 committed are not sufficient to establish this offense.
7 You, the jury, must be convinced beyond a reasonable
8 doubt that the defendant was a participant or a substantial
9 assistant in the commission of the crime rather than merely
10 a knowledgeable spectator.

11 With respect to the second element of the
12 aiding and abetting offense, I instruct you that the
13 offense which the defendant is accused of committing by
14 Count 4 is one which requires specific criminal intent or
15 a culpable purpose in order to find him guilty.

16 Thus, if you find that the defendant
17 was a participant or substantially assisted in the offense
18 alleged in Count 4 of the indictment, you must then decide
19 beyond a reasonable doubt whether the defendant did so
20 willfully and knowingly in a community of unlawful
21 purpose with some other person. I have already defined
22 the words "knowingly" and "willfully" for you. An aider
23 or abettor is punishable the same as a principal or one
24 who actually committed the crime and thus the intent
25 needed to convict the defendant must be the same as would

1 be required to convict the principal.

2 In other words, an aider and abettor
3 must have the same knowledge and intent required as the
4 principal, thus proof of the defendant's knowledge that
5 the automobile had been stolen is necessary to convict
6 him of aiding and abetting.

7 I want to suggest to you again that while
8 the law is for the Court and you are to apply the law as
9 given you in these instructions, the finding of the facts
10 in this case is entirely for you. Whatever reference the
11 Court has made to the evidence or pleadings is only for
12 the purpose of making application of the principles of law
13 to the issues in this case, and without any purpose of
14 indicating in the least degree how the Court may think
15 that the case ought to be decided on the facts, that is
16 for you to determine.

17 The exhibits which have been admitted
18 into evidence during the trial are for your consideration
19 in your deliberations.

20 We will send a copy of Counts 3 and 4 of
21 the indictment to you in the jury room. Counts 1, 2 and 5
22 will be eliminated as they no longer are for your consid-
23 eration.

24 You must return a verdict of guilty or
25 not guilty as to each count still under consideration,

1 that is Counts 3 and 4. Your verdict must be unanimous
2 and will be delivered orally by your foreman in response
3 to inquiries made by the Clerk.

4 ***

5 THE COURT: Will the Marshal come forward
6 and be sworn please? Mrs. Gould, at this time I am going
7 to thank you very much for your service in this case and
8 excuse you, subject to call, and as I have said, probably
9 that will not be until early May. The rest of you ladies
10 and gentlemen may now take the case.

11 [The Court recessed at 11:35 o'clock A.M.]

12 [In Chambers at 1:30 o'clock P.M.]

13 THE COURT: Mr. O'Neill, what do you
14 have to say?

15 MR. O'NEILL: Your Honor, pursuant to the
16 indication I gave at the bench, probably the
17 record should reflect shortly before noontime
18 I gave to both the Court and Mr. Kaplan a
19 Xeroxed copy of a piece of paper on which I
20 had listed three case types which I believe
21 support the position of 18 United States Code,
22 Section 2. It has not been expected for the
23 Court to charge aiding and abetting. Since
24 this is not a part of the record, I would like
25 to read the indications.

United States of America vs.

United States District Court

Daniel Richard Zogbi

DISTRICT OF VERMONT

DEFENDANT

DOCKET NO. ➔ **Cr. 76-79-1**

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 235 (6)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH

4

DAY

11

YEAR

77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

~~MARK~~ **Mark A. Kaplan, Esq.**

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of { ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **violation of Sections 2312 of Title 18, United States Code.**

APR 11 5 15 PM '77
CLERK
DEPUTY CLERK
U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED
549

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **one**

year as to counts 3 and 4. Execution of sentence is suspended with exception of sixty days which is to be served in a jail type institution and defendant is placed on probation for a period of three years to commence upon release from confinement. Sentences to run concurrently with each other and with sentence imposed in Criminal No. 76-60-1.

CONDITIONS

SPECIAL
CONDITIONS
OF
PROBATION

1. Defendant is not to enter the United States unless by permission of the Immigration officials.
2. Defendant is not to possess, buy, sell or otherwise deal in firearms procured directly or indirectly from any firearms dealer or source in the United States.
3. Defendant shall obey all local, state and federal laws and comply with the rules and regulations of the Probation Department.

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**ADDITIONAL
CONDITIONS
OF
PROBATION**

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set forth on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

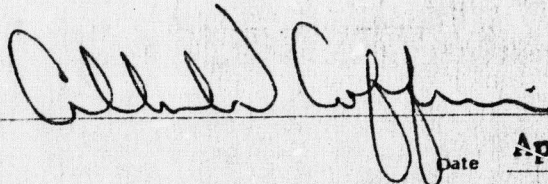
**COMMITMENT
RECOMMEN-
DATION**

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge
☐ U.S. Magistrate



Date April 11, 1977

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Docket No. Cr. 77-79

V.

DANIEL RICHARD ZOGBI

CERTIFICATE OF SERVICE

I, Mark A. Kaplan, hereby certify that on the 3rd day of August, 1977, I made service of Appellant's Appendix upon Jerome O'Neil, Assistant U.S. Attorney, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to him at his office in Burlington, Vermont.

Mark A. Kaplan
Mark A. Kaplan, Attorney
for Appellant.